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MDC Rests. v. Eighth Jud. Dist. Ct., 132 Nev. Adv. Op. No. 76 (May 31, 2018)

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MDC Rests. v. Eighth Jud. Dist. Ct., 132 Nev. Adv. Op. No. 76 (May 31, 2018).[1]

STATUTORY INTERPRETATION: MINUMUM WAGE ACT

Summary

"Health benefits," as considered by the Minimum Wage Act of the Nevada Constitution, must mean the equivalent of one extra dollar per hour in wages to the employee, but offered in the form of health insurance as opposed to dollar wages.

Opinion

The Minimum Wage Act (MWA) of the Nevada Constitution allows an employer who provides health benefits to pay a minimum wage of one dollar per hour less than an employer who does not provide such benefits. The court clarifies what benefits are to be provided in order to qualify for this privilege. The MWA requires that an employer who pays one dollar per hour less in wages to provide a benefit in the form of health insurance at least equivalent to the one dollar per hour in wages that the employee would otherwise receive.

I.

A.

The MWA is the result of a voter initiative called "The Raise the Minimum Wage for Working Nevadans Act." This initiative found that Nevada workers were not sufficiently compensated considering the growth in living expenses. After passage, it became Article 15, Section 16 of the Nevada Constitution. It states that "the rate shall be five dollars and fifteen cents ($5.15) per hour worked, if the employer provides health benefits as described herein, or six dollars and fifteen cents ($6.15) per hour if the employer does not provide such benefits," and that "offering health benefits within the meaning of this section shall consist of making health insurance available to the employee for the employee and the employee's dependents at a total cost to the employee for premiums of not more than 10 percent of the employee's gross taxable income from the employer."[2] Currently, the rates have been adjusted, requiring employers who do not provide health benefits to pay $8.25 (upper-tier minimum wage) and those who do offer them to pay employees $7.25 (lower-tier minimum wage).

B.

Four plaintiffs sued on behalf of themselves and similarly-situated employees, alleging that their employers (hereafter referred to as MDC) violated the MWA by paying them lower-tier minimum wage without providing sufficient health benefits. The employees moved for summary judgment, claiming MDC paid the employees lower-tier minimum wage but the offered benefits package did not comply Nevada statutes placing substantive requirements on health insurance.

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[1] By Jeff Chronister.

[2] NEV. CONST. ART. 15, § 16(A).

The district court granted summary judgment, finding that the MDC can only pay the lower-tier minimum wage if the offered health insurance complies with NRS Chapters 608, 689A, and 689B. NRS 608 requires an employer to comply with NRS 689A and 689B which regulate individual health insurance and group/blanket health insurance. Since MDC's benefits package did not satisfy these statutes, the plans were not "health insurance" under the MWA to qualify MDC to pay lower-tier minimum wage.

MDC requested a writ of mandamus to direct the district court to vacate its order granting partial summary judgment. The writ petitioned that either 1) the employees be referred to the Labor Commission for a consideration of their wage complaints or 2) direct the district court to evaluate MDC's insurance plans under NAC 608.102 rather than NRS 607, 689A, and 689B.

II.

Whether to grant such extraordinary relief falls under the court's discretion.[3] Mandamus will compel performance of a judicial act that the law requires as a duty resulting from the position[4] and is appropriate when an important legal issue needs clarification.[5] Such a petition for a writ of advisory mandamus should be granted only "when the issue presented is novel, of great public importance, and likely to recur."[6] While these petitions are generally denied, MWA interpretation has been a statewide issue that requires attention. Thus, because the issue presents legal issues of statewide importance and a decisive interpretation would promote judicial economy, the court exercised its discretion to consider the merits of the petition.

III.

MDC claimed the Labor Commission should have primary jurisdiction of the issue and the health plans should be evaluated under NAC 608.102. NAC 608.102 purports to establish the requirements to meet so as to pay employees the lower-tier minimum wage under the MWA. Since the MWA leaves a definitional gap, MDC argues that the Labor Commission, with NAC 608.102 as its guide, should be the first to give input whether an insurance plan meets MWA qualifications. The district court may exercise discretion and give primary jurisdiction to an agency such as the Labor Commission.[7]

The court rejected this argument because at issue is the meaning of a provision to the Nevada Constitution. Interpretation of the MWA is a responsibility for the courts and cannot be abdicated. Furthermore, the question is a legal one not requiring the assistance of an agency. In fact, the Legislature recently attempted to codify the substantive requirements of a health plan but the Governor vetoed it, citing that the court already answered the question in a previous opinion.[8] It would be inappropriate for the court to allow the Labor Commission to interpret the constitutional provision after the executive branch recognized the interpretation as a judicial responsibility. Finally, the MWA grants employees a private cause of action to enforce their right

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[3] *See* Smith v. Eighth Judicial Dist. Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).
[4] *See* NEV REV. STAT. § 34.160.
[5] Int'l Game Tech., Inc. v. Second Judicial Dist. Court, 124 Nev. 193, 197-98, 179 P.3d 556, 559 (2008).
[6] Archon Corp. v. Eighth Judicial Dist. Court, 133 Nev., Adv. Op. 101, 407 P.3d 702, 708 (2017).
[7] Nev. Power Co. v. Eighth Judicial Dist. Court, 120 Nev. 948, 962-63, 102 P.3d 578, 587-88 (2004).
[8] Western Cab Co. v. Eighth Judicial District Court, 133 Nev., Adv. Op. 10, 390 P.3d 662 (2017).

to a minimum wage.[9] Thus, the agency's resolution of the issue is unnecessary for uniform enforcement of the regulation because the MWA provides employees with a private cause of action for MWA violations. Plus, if the court granted primary jurisdiction to the Labor Commission this far into litigation, it would unduly delay the resolution of the issue before the court.[10] For these reasons, the court declined ceding primary jurisdiction to the Labor Commission.

IV.

NRS Chapters 608, 609A, and 609B fail to set the constitutional standard for the quality of health insurance necessary that allows an employer to pay lower-tier minimum wage.

A.

NAC 608.102 requires an employer who pays the lower-tier minimum wage to offer health insurance that "[clovers those categories of health care expenses that are generally deductible by an employee on his individual federal income tax return pursuant to 26 U.S.C. § 213 and any federal regulations relating thereto, if such expenses had been borne directly by the employee." Both parties seek to clarify the meaning of this text. MDC argues that a plan coverage for *any* expenses that might be deductible on a federal income tax return qualifies as "health insurance" and permits lower-tier minimum wage payment. The employees, though, assert that it is equally reasonable to interpret the statute as forcing a plan to cover *all* benefits that could be deductible on the federal income tax return, and that employers must provide comprehensive insurance policies to pay lower-tier minimum wage.

Regulatory agencies are merely reference points to define "health insurance." However, the issue is not the definition but rather whether there is a minimum quality or substance of health insurance that the employer must provide to pay the lower-tier minimum wage under MWA. Thus, holding that the employer need only provide *any* plan would allow an employer to qualify for lower-tier minimum wage with even the most meager of plans, removing the employee of the benefit. However, forcing an employer to provide *all* conceivable healthcare coverage benefits would disincentivize employers from providing plans instead of paying the extra dollar per hour. To support the MWA's two-tier approach, qualifying health benefits must fall somewhere between these two extremes. The court must seek after a workable standard to assess health plans.

B.

"The goal of constitutional interpretation is 'to determine the public understanding of a legal text' leading up to and 'in the period after its enactment or ratification."[11] When the meaning of the provision is clear on its face, then the court will not go beyond the facial language in search of meaning.[12] However, when a provision is ambiguous, the court may look to the provision's

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[9] *See* Nev. Const. art. 15, § 16(B) ("An employee claiming violation of this section may bring an action against his or her employer in the courts of this State to enforce the provisions of this section and shall be entitled to all remedies available under the law or in equity appropriate to remedy any violation of this section. . . .").

[10] Pierce, *supra* note 8, at 1162 (respecting that allocation of responsibility to an agency can be outweighed by undue delay in resolving an issue).

[11] Strickland v. Waymire, 126 Nev. 230, 234, 235 P.3d 605, 608 (2010).

[12] Miller v. Burk, 124 Nev. 579, 590, 188 P.3d 1112, 1120 (2008).

history, public policy, or the intentions of the voters in passing it.[13] The court considers these sources.

The purpose of MWA was to provide workers with higher wages, to fight poverty with health insurance, and ensure workers are living above the poverty line. Nothing in the text, however, proves that the voters intended to create one tier that was inherently more or less valuable to employees than the other. Instead, both tiers are different means that culminate in the same end of fighting poverty as the upper-tier provides more money to fight against poverty while the lower-tier fights poverty through health benefits.

Hence, if both tiers are meant to achieve the same goal, an employer who pays the lower tier minimum wage must offer health benefits that, at the very least, fill the one-dollar gap in value between the $7.25 per hour lower-tier minimum wage and the $8.25 per hour upper-tier minimum wage. Therefore, "health benefits" must mean the equivalent of one extra dollar per hour in wages to the employee, but offered in the form of health insurance as opposed to dollar wages. This ensures that employees may receive an equal benefit under either tier of the MWA. An employer is qualified for lower-tier minimum wage when the employer offers health benefits of a value greater than or equal to the wage of an additional dollar per hour.

V.

The court clarified that an employer may pay the MWA's lower-tier minimum wage to an employee if the employer offers health insurance at a cost to the employer of the equivalent of at least an additional dollar per hour in wages, and at a cost to the employee of no more than 10 percent of the employee's gross taxable income from the employer. The court remanded the case for further considerations to determine if the benefits offered qualified low-tier minimum wage.

[13] *Id.*